

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL THOMAS COLLINS,

Petitioner,

v.

JON LAW,

Respondent.

No. 4:15-cv-05004-EFS

**ORDER DISMISSING HABEAS ACTION
FOR FAILURE TO EXHAUST STATE
COURT REMEDIES**

BEFORE THE COURT is Petitioner's First Amended Petition, ECF No. 6. Petitioner, a prisoner at the Benton County Jail, is proceeding *pro se* and the \$5.00 filing fee has been paid.

An amended pleading supersedes the original pleading. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, **IT IS ORDERED** that the District Court Executive shall **ADD** Respondent Jon Law and **TERMINATE** Franklin County, Washington.

Plaintiff challenges Franklin County convictions for Second Degree Identity Theft and Forgery. He was convicted on June 3, 2014, based on a plea of no contest, and sentenced on February 3, 2015. He indicates that he has an appeal pending in the Washington State Court of Appeals, Division III.

Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust the state court remedies available

1 to him. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004);
2 *Castille v. Peoples*, 489 U.S. 346 (1989). Exhaustion generally
3 requires that a prisoner give the state courts an opportunity to act
4 on his claims before he presents those claims to a federal court.
5 *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A petitioner has not
6 exhausted a claim for relief so long as the petitioner has a right
7 under state law to raise the claim by available procedure. *See id.*; 28
8 U.S.C. § 2254(c).

9 To meet the exhaustion requirement, the petitioner must have
10 "fairly present[ed] his claim in each appropriate state
11 court . . . thereby alerting that court to the federal nature of the
12 claim." *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.
13 364, 365-66 (1995). The exhaustion requirement protects the role of
14 state courts in enforcing federal law, prevents the disruption of
15 state judicial proceedings, and gives the state's highest court the
16 opportunity to examine and vindicate a right of federal constitutional
17 magnitude. *Rose v. Lundy*, 455 U.S. 509, 518-20 (1982).

18 A petitioner seeking relief must have presented each claim to
19 the state Supreme Court based upon the same federal **legal** theory and
20 the same **factual** basis asserted in the federal petition. It is only
21 then that the exhaustion requirement of 28 U.S.C. § 2254 is fulfilled.
22 *Hudson v. Rushen*, 686 F.2d 826 (9th Cir. 1982), *cert. denied*, 461 U.S.
23 916 (1983); *Schiers v. People of State of California*, 333 F.2d 173
24 (1964).

25 Although granted the opportunity to do so, Petitioner has failed
26 to demonstrate that he has exhausted available State court remedies.

1 Therefore, **IT IS ORDERED** this habeas action is **DISMISSED without**
2 **prejudice** to pursuing appropriate remedies in State Court and to
3 filing a new and separate federal habeas action once he has exhausted
4 all available State court remedies.

5 The Court notes that Petitioner has attached a copy of an Order
6 in a pending class action lawsuit in the Western District of
7 Washington. ECF No. 6-1. Whether Petitioner is a plaintiff or member
8 of the class pursuing that civil action, the fact that he must exhaust
9 state court remedies regarding his conviction and sentence before
10 pursuing a federal habeas action is not excused.

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this Order, enter judgment, forward a copy to Petitioner, and
13 close the file. The Court further certifies that pursuant to 28
14 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken
15 in good faith, and there is no basis upon which to issue a certificate
16 of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

17 **DATED** this 4th day of June 2015.

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19 s/Edward F. Shea
EDWARD F. SHEA
20 Senior United States District Judge
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